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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,565	10/08/2003	Michael A. Guillorn	UBAT1360-2	9447

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JOHN BRUCKNER, P.C.
5708 BACK BAY LANE
AUSTIN, TX 78739

EXAMINER	
POMPEY, RON EVERETT	

ART UNIT	PAPER NUMBER
2812	

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

✓ R EIC

Office Action Summary	Application No.	Applicant(s)	
	10/681,565	GUILLORN ET AL.	
	Examiner	Art Unit	
	Ron E. Pompey	2812	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 October 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *9-21* is/are pending in the application.

4a) Of the above claim(s) *11-18* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *9,10 and 19-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *08 October 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Applicant's election without traverse of claims 9,10 and 19-21 is acknowledged.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 9-10 and19-21, respectively, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. First for claims 9-10, besides in the summary of the device section of the specification, there is no mention or drawing of the conduit element claimed in claims 9 and 10. Also, for claims 19-21 the examiner is not clear how the gated field emission device can comprise an apparatus and finds no disclosure of this in the specification or drawings. Clarification is needed. The examiner will read claims 19-21 as dependent on the device of claim 9 or 10.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Choi et al. (US 6,472,802) in further view of Spindt (US 5,235,244).

Spindt discloses the limitations of:

vertically aligned carbon nanostructure (13, fig. 2B) coupled to a substrate;

covering at least a portion of vertically aligned carbon nanostructure with a dielectric (14, fig. 2C);

a gate (15, fig. 2C) coupled to the dielectric; and

an aperture (fig. 2E) in the gate and removing a portion (fig. 2F) of the dielectric;

gate aperture substantially aligned with the vertically aligned carbon nanostructure (col. 4, lns. 16-43).

Choi does not disclose the claimed limitation(s) of:

another dielectric coupled to the gate;

a focusing electrode coupled to the another dielectric, the focusing electrode including another aperture substantially aligned with the vertically aligned carbon nanostructure; and

dielectric, gate, another dielectric and another aperture define a well that circumscribes the vertically aligned carbon nanostructure.

However,

a. Spindt discloses the above claimed limitations regarding:

A dielectric (20, fig. 1), gate (18, fig. 1), another dielectric (32, fig. 1) and another aperture in a focusing electrode (34, fig. 1) to define a well that circumscribes the vertically aligned cathode (12, fig. 1) in column(s) 1, line(s) 53 - column(s) 2, line(s) 5.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine Choi with Spindt, because the another aperture in a focusing electrode allows for elimination of crosstalk between pixels of the device. Also,

because Choi and Spindt form displays with the field emission devices it would be inherent that the displays will include IC and circuit boards.

Claims 9-10 and 19-21 are considered to be product by process claims and only the structure limitations will be used to determine the patentably of the claims: a "product by process" claim is directed to the product per se, no matter how actually made, In re Hirao, **190 USPQ 15 at 17**(footnote 3). See also in re Brown, **173 USPQ 685**: In re Luck, **177 USPQ 523**; In re Fessmann, **180 USPQ 324**: In re Avery, **186 USPQ 116** in re Wertheim, **191 USPQ 90** (**209 USPQ 254** does not deal with this issue); and In re Marosi et al, **218 USPQ 289** final product per se which must be determined in a "product by, all of" claim, and not the patentability of the process, and that an old or obvious product, whether claimed in "product by process" claims or not. Note that Applicant has the burden of proof in such cases, as the above case law makes clear. "Even though product-by- process claims are limited by and defined by the process, determination of patentability is based upon the product itself. The patentability of a product does not depend on its method of production. If the product in product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product is made by a different process." In re Thorpe, 227 USPQ 964, 966 (Fed. Cir. 1985)(citations omitted).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ron E. Pompey whose telephone number is (571) 272-1680. The examiner can normally be reached on compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael S. Lebentritt can be reached on (571) 272-1873. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ron Pompey
AU:2812
March 30, 2005

MICHAEL LEBENTRITT
SUPERVISORY PATENT EXAMINER